

# Exhibit D

G6H8LEOC

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 SERGEY LEONTIEV,

4 Plaintiff,

5 v.

16 Cv. 3595 (JSR)

6 ALEXANDER VARSHAVSKY,

7 Defendant.

8 -----x

9 June 17, 2016

5:00 p.m.

10 Before:

11 HON. JED S. RAKOFF

12 District Judge

13 APPEARANCES

14 GIBSON, DUNN & CRUTCHER, LLP

15 Attorneys for Plaintiff

16 BY: ROBERT L. WEIGEL

MARSHALL R. KING

ESTER MURDUKHAYEVA

17 DEBEVOISE & PLIMPTON, LLP

18 Attorneys for Defendant

19 BY: SEAN HECKER

WILLIAM TAFT

NICHOLAS TOMPKINS

G6H8LEOC

1 (Case called)

2 THE DEPUTY CLERK: Will everyone please be seated and  
3 will the parties please state their names for the record.

4 MR. WEIGEL: Robert Weigel, together with Marshall  
5 King and Ester Murdukhayeva, for the plaintiff.

6 THE COURT: The law firms in this case are small and  
7 collegial firms so I can understand why you might not have the  
8 name right.

9 MR. WEIGEL: I know the name; I just don't know how to  
10 pronounce it.

11 Your Honor, just one thing. The caption seems to have  
12 been jumbled in some way. The defendant is Alexander  
13 Varshavsky.

14 THE COURT: Yes, that's what I have.

15 THE DEPUTY CLERK: That's what ECF says.

16 MR. HECKER: Good afternoon, your Honor. Sean Hecker,  
17 Will Taft and Nicholas Tompkins, from Debevoise & Plimpton, for  
18 Mr. Varshavsky.

19 THE COURT: Good afternoon. It's been much too long,  
20 Mr. Hecker, since I last saw you.

21 MR. HECKER: Likewise.

22 THE COURT: So I have your report. The defense says  
23 they have serious concerns about the ability to have this case  
24 trial ready by November 28. I have had many cases involving  
25 many international parties and much international discovery,

G6H8LEOC

1 far more complicated than this one, in which all discovery was  
2 able to be accomplished well within five or six months. What  
3 makes you think this is going to be more difficult?

4 MR. HECKER: Your Honor, in this case the third  
5 parties, from whom discovery will be sought, include a couple  
6 of layers of corporate entities that we believe are affiliated  
7 with Mr. Leontiev. They are in Russia; they are in Cyprus;  
8 they are in other jurisdictions. While Cyprus, as we  
9 understand it, is a relatively easy jurisdiction, as these  
10 things go, pursuant to Hague Convention processes, the  
11 situation in Russia is much more tenuous.

12 We are simply alerting the Court. We will do  
13 everything in our power to move discovery as quickly as  
14 possible. We have every incentive in this case.

15 THE COURT: Tell me specifically the discovery that  
16 you anticipate you would need to take that would involve the  
17 processes of the Russian government.

18 MR. HECKER: Well, your Honor, our understanding is  
19 that much of the information that will help establish that  
20 Mr. Leontiev is affiliated with the entities that borrowed the  
21 large sums involved in this case will be in Russia. We think  
22 witnesses will be in Russia, and we think the corporate  
23 entities will be in Cyprus and other jurisdictions.

24 THE COURT: Put a little flesh on that. Give me an  
25 example of one situation where you think you would be entitled

G6H8LEOC

1 to discovery where you anticipate there might be delay.

2 MR. HECKER: I think it would be in connection with  
3 trying to obtain either deposition testimony or documents of  
4 people located in Russia and documents located in Cyprus. I  
5 think witnesses are likely to be in Cyprus as well, including  
6 corporate nominees.

7 THE COURT: I don't anticipate much problem with  
8 Cyprus. I have right now a case that's going to trial in  
9 September in which the parties are spread all over the world,  
10 the main party is in Brazil, and numerous requests under the  
11 Hague Convention have been made to enumerable countries  
12 throughout the world, and they have all been appropriately  
13 responded to within a matter of a few months.

14 Now, Russia may be a different situation. I have had  
15 some cases involving Russian entities in which some firm called  
16 Gibson Dunn was involved. They seem to be pretty adept at  
17 processing at least their requests in those cases that I had in  
18 the past. So it wasn't a problem there.

19 In terms of what you're trying to establish with  
20 respect to the Russian discovery is what?

21 MR. HECKER: Well, your Honor, I confess that our  
22 investigation on these issues is still very preliminary. This  
23 case was brought preemptively as we are still developing the  
24 case. But our understanding is, for example, there is a  
25 company incorporated in Russia that Mr. Leontiev is a

G6H8LEOC

1 registered owner of and from which funds passed through that  
2 entity and on to other entities in Cyprus, but I am not  
3 prepared to make a representation more detailed than that  
4 because I just don't know the facts well enough, but I do have  
5 reason to believe Russia will be a key piece of discovery in  
6 the equation.

7 THE COURT: To the extent that you're seeking  
8 information regarding Mr. Leontiev's own holdings or whatever  
9 in Russia, presumably, either he is going to produce that  
10 information or he would face sanctions. Yes? If he is the  
11 plaintiff. This would have to be a third party to even begin  
12 to create problems, right?

13 MR. HECKER: Your Honor is certainly correct, that if  
14 Mr. Leontiev, as we suspect, controls entities in Russia and  
15 elsewhere, we believe he would be under an obligation to try to  
16 obtain that information.

17 At this stage, your Honor, I'm not sure we are  
18 requesting any relief. We are prepared to move forward as  
19 aggressively as we can, to move discovery as aggressively as we  
20 can. We just wanted to alert the Court that there may be some  
21 legitimate obstacles here that may make it difficult to operate  
22 within the standard time contemplated under the rules.

23 THE COURT: I will leave it at that, but the  
24 allegation, the central allegation here is that the defendant,  
25 Mr. Varshavsky, has engaged in a campaign of threats, demands

G6H8LEOC

1 and harassment in an effort to obtain payment from the  
2 plaintiff for a debt that the defendant claims the plaintiff  
3 owes him. So I am a little uncertain as to even the relevancy  
4 of some of what you seem to be talking about, but I don't know  
5 the facts either of the case.

6 If the threats were wrongful, even if the debt  
7 existed, then it would be irrelevant whether the debt existed.  
8 If there was a legitimate claim for the debts, the threats  
9 still might be wrongful, depending on the nature of the  
10 threats, or they might not. Again, I don't know any more about  
11 the case than you do. I know less than you do.

12 Maybe we should hear from plaintiff at this point.

13 MR. HECKER: Just one issue. The first action seeks a  
14 declaratory judgment that Mr. Leontiev was entitled to a  
15 judgment, stating that he does not owe a debt or obligation to  
16 Mr. Varshavsky or anyone acting in concert.

17 THE COURT: That's fair enough. The allegation is  
18 there can be no theory under which Mr. Leontiev can be held  
19 legally responsible for repayment of any of the alleged loans,  
20 and they want a declaratory judgment to that effect. So it is  
21 only the second cause of action that gets to the nature of the  
22 threats.

23 MR. HECKER: Exactly.

24 THE COURT: Let me hear from plaintiff's counsel.

25 MR. WEIGEL: I think it's a little odd, your Honor,

G6H8LEOC

1     that his client has been demanding that payment be made by my  
2     client, but yet they cannot sit here and articulate the theory  
3     under which they are claiming that my client is liable and they  
4     have to take discovery all over the world.

5             THE COURT: They didn't quite say that. What they  
6     said is that they thought there might be some discovery. For  
7     example, they say if your client owes them money for X and you  
8     deny it, that might involve some dispute over what the  
9     underlying facts were, and the underlying facts might be facts  
10    that occurred in Russia.

11            By the way, speaking of which, this is to both  
12    counsel, will that determination, under the first cause of  
13    action, be a matter of U.S. law or Russian law or any other  
14    law?

15            MR. WEIGEL: Well, your Honor, there are loan  
16    documents that I have seen that are between a Cyprus company  
17    and a Russian company. The Cyprus company is Ambika and the  
18    Russian company is a Russian company that's owned by a New  
19    Jersey company that's owned by Mr. Varshavsky who is a U.S.  
20    resident.

21            THE COURT: So to the extent there are documents from  
22    the Russian company that he owns, you will be able to produce  
23    them, right?

24            MR. WEIGEL: He should be able to produce those, yes.  
25    We don't know what theory they intend to hold Mr. Leontiev



G6H8LEOC

1     liable for the debts of this Cyprus company. So it's hard for  
2     me to say what law would apply until I know what their theory  
3     is. But I don't think it would be Russian law. I think  
4     perhaps it would be Cypriot law, perhaps it would be U.S. law.

5             THE COURT: Well, I am deemed by law to be an expert  
6     in both Cypriot law and Russian law. I'm not sure that  
7     presumption carries over to U.S. law.

8             MR. WEIGEL: I would vote the other way, your Honor.

9             THE COURT: Just one other thing. The loan documents  
10    you have seen, the Russian company is Mr. Varshavsky's company.  
11    Who owns the Cypriot company?

12            MR. WEIGEL: That is a company that was related to but  
13    not owned by Probusinessbank, which was the Russian bank that  
14    my client was a chairman of that guaranteed these loans, that  
15    is currently in Russian bankruptcy. It was seized by the  
16    Russian depository insurance company after getting a couple of  
17    clean opinions from Deloitte & Touche, and it is now in the  
18    hands of the Russian depository insurance company, but it's  
19    name is Ambika. And we have learned that Mr. Varshavsky's  
20    company, a lawyer from Mr. Varshavsky's company actually  
21    obtained a power of attorney for Ambika and has made a demand  
22    upon the Cypriot management company to turn over all the  
23    records of that company to Mr. Varshavsky's company by June 10.  
24    So, presumably, they have these documents at this point, and we  
25    are, frankly, going to get them from them because it's going to

G6H8LEOC

1 be far easier than even going to the Hague Convention.

2 THE COURT: Let me ask defense counsel one more thing.

3 I think your time to answer is not yet, but are you  
4 denying that you have demanded repayment of the loan?

5 MR. HECKER: Your Honor, I want to be careful because  
6 I am not ultimately certain of the underlying facts. My  
7 understanding is that there have been discussions between my  
8 client and plaintiff about this outstanding loan, a series of  
9 outstanding loans. And so I am not denying that there have  
10 been discussions about a proposed repayment schedule with  
11 Mr. Leontiev, the plaintiff. In fact, one of the more  
12 surprising statements in the case management plan was a claim  
13 that the loans do not involve plaintiff in any way, which I  
14 think discovery will prove completely inaccurate. I don't know  
15 about what precise demands were made.

16 THE COURT: Are the underlying loans loans between  
17 these individuals or loans between companies that they  
18 guaranteed or had some other alleged obligation with respect to  
19 them?

20 MR. HECKER: Your Honor, there are a series of loans,  
21 and my understanding is neither of the names of the plaintiff  
22 or the defendant are on the loan agreements. I think one of  
23 the things we will seek to prove in discovery is that  
24 Mr. Leontiev controls entities that he established, that he  
25 personally had access to these funds, controlled the funds, the

G6H8LEOC

1 ability to repay funds, but that is something we will seek to  
2 prove in discovery. So it is surprising to see a claim that he  
3 had no involvement in these loans at all. But it is clear that  
4 it is papered between people or entities other than our two  
5 clients.

6 THE COURT: Let me ask you this. Are any of the  
7 alleged demands, threats, whatever, are they in writing?

8 It's really a question for plaintiff's counsel.

9 MR. WEIGEL: There are a series of e-mails between  
10 counsel. I don't know if they are e-mails between clients.  
11 And I believe there are letters too actually.

12 THE COURT: I'm sorry?

13 MR. WEIGEL: There are letters too.

14 MR. HECKER: Between counsel.

15 MR. WEIGEL: Yes.

16 THE COURT: So the complaint is filled with various  
17 allegations of threats, such as in paragraph 30, for example,  
18 Mr. Varshavsky threatened to institute criminal charges against  
19 Mr. Leontiev.

20 In paragraph 36, Mr. Varshavsky told Mr. Zheleznyak --  
21 who is Mr. Zheleznyak?

22 MR. WEIGEL: Mr. Zheleznyak, he was another official  
23 of the bank. I think he was effectively the chief executive  
24 officer of Probusinessbank and a close friend and business  
25 relation with Mr. Leontiev.

G6H8LEOC

1           THE COURT: Anyway, the allegation was that Mr.  
2     Varshavsky told Mr. Zheleznyak, unless Mr. Varshavsky received  
3     payment from Mr. Leontiev, he would arrange to have  
4     Mr. Leontiev's name linked to terrorism financing.

5           In or around March 2016, Mr. Varshavsky told  
6     Mr. Zheleznyak that if Mr. Leontiev paid him approximately \$40  
7     million, Mr. Varshavsky would arrange it so that authorities in  
8     Russia would cease their investigation of certain individuals  
9     associated with Probusinessbank, etc.

10          Those were all oral is my question?

11          MR. WEIGEL: Yes, your Honor.

12          THE COURT: The Court will take the possibility that  
13     there may be some problems in obtaining information from the  
14     Russian government, but I still think we should assume the  
15     best, and it does sound to me that a lot of the information  
16     that will be sought that is relevant will be obtained through  
17     the plaintiff or through the plaintiff's control of various  
18     entities.

19          So going to the case management plan, the case is to  
20     be tried to a jury.

21          The joinder of -- does anyone anticipate any  
22     additional parties?

23          MR. HECKER: We think it's likely that we will be  
24     bringing a cross-claim that would involve additional parties.

25          THE COURT: When is your time to answer?

G6H8LEOC

1 MR. HECKER: I believe at the moment it's the 24th,  
2 next Friday.

3 THE COURT: When are you seeking?

4 MR. HECKER: I'm sorry?

5 THE COURT: Are you seeking an extension on that?

6 MR. HECKER: May I have one moment, your Honor?

7 THE COURT: My concern is, if there are going to be  
8 new parties, I want them brought in sooner than later.

9 MR. HECKER: Understood. The proposed case management  
10 plan has joinder of additional parties by July 15.

11 THE COURT: So that's fine. Yes?

12 MR. HECKER: That's fine.

13 THE COURT: OK. Good.

14 Amendment of pleadings without leave of the Court,  
15 same date.

16 Something that's not part of my case management plan,  
17 it's really set by law, but you propose that the Rule 26(a)(1)  
18 initial disclosures be by July 8. That's fine.

19 First requests for production of documents July 1.

20 Interrogatories, the very limited interrogatories that  
21 I permit and that our local rule permits, also July 1.

22 Proponent expert report, what kind of expert does  
23 anyone have in mind?

24 MR. HECKER: We are not sure, Judge, but there may be  
25 a need for a Russian law expert or potentially a Cypriot law

G6H8LEOC

1 expert.

2 THE COURT: That's possible.

3 I will set the proposal there October 7 for  
4 proponent's and October 21 for opponent's.

5 All depositions to be completed by October 28.

6 Requests to admit served by September 28.

7 All discovery to be completed by October 28.

8 Moving papers on summary judgment, you had November 2.

9 I will give you a little more time in that. Let's say November  
10 10.

11 Answering papers November 24.

12 Reply papers December 1.

13 Final pretrial conference, let's look at December 9.

14 THE DEPUTY CLERK: December 9, a Friday, any time you  
15 like.

16 THE COURT: December 9 at 3:30.

17 MR. WEIGEL: Your Honor, November 24 is Thanksgiving.

18 THE COURT: Good point. But I didn't think Gibson  
19 Dunn took that as a holiday.

20 MR. WEIGEL: Well, it's not clear whether we will be  
21 moving or responding, and I was concerned about Debevoise.

22 THE COURT: Let's move that to the following Monday  
23 because then your associates can spend the Thanksgiving weekend  
24 preparing.

25 MR. WEIGEL: Perhaps Tuesday?

G6H8LEOC

1 THE COURT: Tuesday is fine.

2 That would be November 29.

3 Then reply papers December 6.

4 Then we will have the final pretrial conference on

5 December 15, Thursday, at 3:30.

6 So that changes the ready for trial date to December

7 15. So I can't imagine, Mr. Hecker, that you would have any

8 problem, given that extension, in fulfilling all of the

9 discovery requirements.

10 So I will sign the case management plan and it will be

11 filed electronically and therefore available to both sides.

12 Is there anything else that we need to take up today?

13 MR. WEIGEL: No, your Honor.

14 MR. HECKER: No, your Honor.

15 THE COURT: Very good. Thanks very much.

16 (Adjourned)

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